

Dow Jones & Company, Inc. and Independent Association of Publishers' Employees. Cases 2-CA-24686 and 2-CA-24770

July 22, 1992

ORDER DENYING MOTION

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

On February 11, 1992, the Regional Director for Region 2 issued a consolidated amended complaint and notice of hearing in the above-captioned case, alleging that the Respondent has committed various violations of Section 8(a)(1) and (5) of the Act. The Respondent filed a timely answer admitting in part and denying in part the allegations in the complaint and raising certain affirmative defenses.

Thereafter, on March 20, 1992, the Respondent filed a Motion for Partial Summary Judgment and a supporting memorandum, with exhibits attached. The motion contends that the Board should dismiss and defer to the parties' grievance arbitration process those portions of the complaint alleging that the Respondent violated Section 8(a)(5) by unilaterally offering early retirement "buyout offers" to certain unit employees and by failing and refusing to bargain with the Union over this mandatory subject. The Respondent argues that the circumstances surrounding the buyout offers meet the deferral standards of *Collyer Insulated Wire*, 192 NLRB 837 (1971), as followed in *E. I. du Pont & Co.*, 293 NLRB 896 (1989).

On March 30, 1992, the General Counsel and the Charging Party-Union each filed oppositions to the Respondent's motion, to which, on April 3, 1992, the Respondent filed a reply brief. On April 7, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On April 21, 1992, the Union filed a supplemental opposition brief. On April 23, 1992, the General Counsel filed a response brief in opposition to the Motion for Partial Summary Judgment,

to which the Respondent filed a reply on April 24, 1992.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on the Motion for Partial Summary
Judgment**

Having duly considered the matter, we find that the Respondent's motion should be denied. In addition to the 8(a)(5) allegations for which the Respondent seeks deferral, the complaint also contains allegations that all parties agree will be heard by an administrative law judge. These allegations are (1) that the Respondent independently violated Section 8(a)(1) by banning union meetings on company premises and prohibiting the Union from inviting nonemployees onto the premises to meet with unit employees, while permitting nonunion-related meetings by outside organizations on company premises, and (2) that these prohibitions against union activities constituted a violation of Section 8(a)(5) because they were departures from past practice and were undertaken without affording the Union an opportunity to negotiate and bargain over this changed condition of employment.

We find that the Respondent's motion and the responses of the General Counsel and the Union raise issues of material fact concerning the *DuPont* standards for deferral, particularly as to whether the complaint allegations for which deferral is not sought are sufficiently related to the buyout allegations so as to constitute a "claim of employer animosity to the employees' exercise of protected rights." *DuPont* at 897. The parties may, if they choose, present their deferral arguments to an administrative law judge, who may consider them in the context of a full record on all the complaint allegations.

Accordingly, the Respondent's Motion for Partial Summary Judgment is denied, and the proceeding is remanded to the Regional Director for Region 2 for further appropriate action.